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March 12, 2007

**VIA FACSIMILE, E-MAIL and U.S. MAIL**

Mr. Bruce Gelber  
Chief, Environmental Enforcement Section  
Environmental and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DJ #90-11-3-06529

Mr. Keith Takata  
Director, Superfund Division  
U.S. Environmental Protection Agency  
Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Re: Omega PRP Organized Group's ("OPOG") Statement of Position Regarding  
Certain Oversight Costs

Dear Mssrs: Gelber and Takata:

Enclosed please find the above referenced document. Any questions or comments should be directed to me.

Very truly yours,



Leslie R. Schenck

cc: Karl Fingerhood  
Elaine Chan  
Chris Lichens  
Steve Berninger  
Frederick K. Schauffler

UNITED STATES OF AMERICA,

Plaintiff,

v.

ABEX AEROSPACE DIVISION and PNEUMO-  
ABEX CORPORATION; AIR PRODUCTS AND  
CHEMICALS, INC.; ALCOA INC.; ALLIED  
SIGNAL, INC. (now known as HONEYWELL  
INTERNATIONAL, INC.); ALPHA  
THERAPEUTIC CORPORATION; APPLIED  
MICRO CIRCUITS CORPORATION;  
APPROPRIATE TECHNOLOGIES II, INC.;  
ARLON ADHESIVES & FILM; ARMOR ALL  
PRODUCTS CORPORATION; AVERY  
DENNISON CORPORATION; BASF  
CORPORATION; BAXTER HEALTHCARE  
CORPORATION; BOEING NORTH AMERICA,  
INC.; BONANZA ALUMINUM CORP.;  
BORDEN, INC.; BOURNS, INC.; BROADWAY  
STORES, INC.; CALIFORNIA DEPT. OF  
TRANSPORTATION; CALSONIC CLIMATE  
CONTROL, INC. (now known as CALSONIC  
NORTH AMERICA, INC.); CANON BUSINESS  
MACHINES, INC.; INTERNATIONAL PAPER  
COMPANY; WASTE MANAGEMENT, INC.;  
UNITED DOMINION INDUSTRIES; CITY OF  
LOS ANGELES, DEPARTMENT OF  
AIRPORTS; CITY OF SANTA MARIA;  
COUNTY OF LOS ANGELES; CROSBY &  
OVERTON, INC.; DATATRONICS  
ROMOLAND, INC.; DEUTSCH ENGINEERED  
CONNECTING DEVICES/DEUTSCH GAV;  
DISNEYLAND CENTRAL PLANT; DOW  
CHEMICAL COMPANY; FHL GROUP;  
FIRMENICH INCORPORATED; FORENCO,  
INC.; GAMBRO, INC.; GATX TERMINALS  
CORPORATION; GENERAL DYNAMICS  
CORPORATION; GEORGE INDUSTRIES;  
GOLDEN WEST REFINING COMPANY;  
GREAT WESTERN CHEMICAL COMPANY;  
GSF ENERGY, L.L.C. (successor to GSF  
ENERGY, INC.); GULFSTREAM AEROSPACE

Case No. 00-12741 CAS (Ctx)

Dispute Resolution Pursuant to Consent  
Decree Paragraph 57

OMEGA PRP ORGANIZED GROUP's  
("OPOG") STATEMENT OF  
POSITION REGARDING CERTAIN  
OVERSIGHT COSTS

CORPORATION; HEXEL CORPORATION;  
HILTON HOTELS CORPORATION; HITACHI  
HOME ELECTRONICS (AMERICA), INC.; BP  
AMERICA, INC.; HONEYWELL  
INTERNATIONAL INC.; HUBBEL INC.; HUCK  
MANUFACTURING COMPANY (by its former  
parent Federal Mogul Corporation); HUGHES  
SPACE AND COMMUNICATIONS  
COMPANY; HUNTINGTON PARK RUBBER  
STAMP COMPANY; INTERNATIONAL  
RECTIFIER CORPORATION; JAN-KENS  
ENAMELING COMPANY; JOHNS MANVILLE  
INTERNATIONAL, INC.; K.C. PHOTO  
ENGRAVING CO.; KESTER SOLDER  
DIVISION, LITTON SYSTEMS, INC.;  
KIMBERLY CLARK WORLDWIDE, INC.;  
KOLMAR LABORATORIES, INC.; LOS  
ANGELES COUNTY METROPOLITAN  
TRANSPORTATION AUTHORITY; LOMA  
LINDA UNIVERSITY; BRITISH ALCAN  
ALUMINUM, P.L.C.; MATTEL, INC.;  
MAXWELL TECHNOLOGIES, INC.; THE MAY  
DEPARTMENT STORES COMPANY;  
McDONNELL DOUGLAS CORPORATION, a  
wholly owned subsidiary of the BOEING  
COMPANY; MEDEVA PHARMACEUTICALS  
CA, INC. (f/k/a MD PHARMACEUTICAL INC.);  
METROPOLITAN WATER DISTRICT OF  
SOUTHERN CALIFORNIA; MICO INC.;  
MINNESOTA MINING AND  
MANUFACTURING COMPANY; QUALITY  
CARRIERS INC. (f/k/a MONTGOMERY TANK  
LINES, INC.); NI INDUSTRIES (a division of  
TRIMAS, a wholly owned subsidiary of MASCO  
TECH); NMB TECHNOLOGIES  
CORP.; OHLINE CORP.; OJAI  
MANUFACTURING TECHNOLOGY, INC.;  
SIEMENS MEDICAL SYSTEMS, INC.;  
PACIFIC BELL TELEPHONE COMPANY;  
PACIFIC GAS & ELECTRIC CO.; PIONEER  
VIDEO MANUFACTURING, INC.; PRINTED  
CIRCUITS UNLIMITED; NELLCOR PURTIAN-  
BENNETT; LONZA INC.; QUEST  
DIAGNOSTICS CLINICAL LABORATORIES,  
INC. (f/k/a BIO SCIENCE ENTERPRISES);

RATHON CORP. (f/k/a DIVERSEY CORP.);  
RAYTHEON COMPANY; REGENTS OF THE  
UNIVERSITY OF CALIFORNIA; REICHHOLD  
INC.; REMET CORPORATION; RESINART  
CORP.; ROBINSON PREZIOSO INC.; ROGERS  
CORPORATION; SAFETY-KLEEN SYSTEMS,  
INC. (f/k/a SAFETY-KLEEN CORP.); SCRIPTO-  
TOKAI CORPORATION; SHELL OIL  
COMPANY; THE SHERWIN-WILLIAMS  
COMPANY; SIGMA CASTING  
CORPORATION (now known as HOWMET  
ALUMINUM CASTING, INC.); SIGNET  
ARMORLITE, INC.; SOUTHERN CALIFORNIA  
EDISON CO.; SOUTHERN PACIFIC  
TRANSPORTATION CO. (now known as  
UNION PACIFIC RAILROAD COMPANY);  
HARSCO CORPORATION; BHP COATED  
STEEL CORP.; TELEDYNE INDUSTRIES INC.;  
TELEDYNE TECHNOLOGIES  
INCORPORATED; TENSION ENVELOPE  
CORP.; TEXACO INC.; TEXAS  
INSTRUMENTS TUCSON CORPORATION  
(f/k/a BURR-BROWN CORP.); TITAN  
CORPORATION; TODD PACIFIC  
SHIPYARDS; TREASURE CHEST; PACIFIC  
PRECISION METALS, INC.; UNION OIL  
COMPANY OF CALIFORNIA; UNITED  
PARCEL SERVICE, INC.; UNIVERSAL CITY  
STUDIOS, INC.; VAN WATERS & ROGERS  
INC.; and VOPAK DISTRIBUTION AMERICAS  
CORPORATION (f/k/a UNIVAR  
CORPORATION); VERTEX MICROWAVE  
PRODUCTS, INC. (f/k/a GAMMA-F CORP.);  
WALT DISNEY PICTURES AND  
TELEVISION; WARNER-LAMBERT  
COMPANY; WEBER AIRCRAFT; WESTERN  
METAL DECORATING CO.; YORK  
INTERNATIONAL CORPORATION; YORT  
INC. (f/k/a TROY LIGHTING, INC.-TIFFANY  
DIVISION,

Defendant.

The Omega Chemical Site PRP Organized Group ("OPOG") hereby initiates Formal Dispute Resolution pursuant to Paragraph 57 as set forth in Section XIX of the February 28, 2001 Consent Decree ("Consent Decree") pursuant to which work is being done at the Omega Chemical Corporation Superfund Site ("Site"). OPOG initiated informal dispute resolution on January 8, 2007 which ended on March 5, 2007. This Statement of Position supports OPOG's initiation of Formal Dispute Resolution regarding this matter.

This dispute relates to the United States' Request for Payment of EPA Oversight Costs related to the Omega Chemical Corporation, CA Superfund Site 09BC received December 11, 2006, specifically claiming \$363,831.77 in oversight charges due from OPOG. Specifically, OPOG is disputing the CH2MHill ("Hill") charges in the amount of \$170,537.01 as no substantive backup for the Hill charges is provided to EPA or OPOG. Therefore, neither EPA nor OPOG can evaluate whether the Hill charges are properly being made to Contract Number 68-W9-8225. EPA and OPOG, therefore, cannot evaluate whether there are any accounting or other errors associated with the Hill charges.

The Consent Decree requires that OPOG establish an escrow account funded with the \$170,537.01 representing the charges by Hill for 2005- 2006 for which we request supporting documentation. OPOG established such an escrow account funded with \$170, 537.01 and wired to EPA the remainder of the oversight charges in the amount of \$193,294.76

Paragraph 44 of the Consent Decree requires OPOG to reimburse the United States for Oversight Costs incurred in connection with the Consent Decree and EPA is required under this section to provide OPOG with a Regionally Prepared Itemized Summary Report which includes direct and indirect costs incurred by EPA and its contractors and a DOJ prepared cost summary

which reflects costs incurred by DOJ and its contractors, if any, on a periodic basis. Pursuant to paragraph 45 of the Consent Decree, Dispute Resolution is appropriately invoked if OPOG determines that the United States has made an accounting error, a cost item is included which represents costs inconsistent with the NCP or that such costs are not Oversight Costs, as that term is defined by the Consent Decree.

Oversight costs mean all direct and indirect costs not inconsistent with the NCP, that the United States incurs in connection with the Work required by this Consent Decree, including costs incurred in reviewing or developing plans, reports and other items pursuant to the Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including but not limited to contractor costs, travel costs, laboratory costs, together with Interest as due.

The documentation EPA currently gathers from Hill in support of its charges does not provide the necessary level of detail such that either EPA or OPOG can evaluate whether Hill has made an accounting error, whether a cost item is consistent with the NCP or whether such costs are even Oversight costs as defined by the Consent Decree. The EPA receives Monthly Status Reports ("MSR") and certain other "Reports" that include summaries of charges and very brief and vague summaries of each month's work done by all Hill employees. This documentation, which Ms. Cox and Mr. Lichens have previously stated is the universe of documentation the EPA receives from Hill, was provided to OPOG for the 2004-2005 annual bill after OPOG representatives executed a Confidentiality Agreement with EPA. The MSRs and Reports do not provide the appropriate level of documentation or detail to allow OPOG to evaluate Hill's charges. The generality of the MSR and Report descriptions does not allow OPOG to determine if there are any accounting errors or whether time is being mistakenly billed

to Contract 68-W9-8225, the contract number assigned to the OPOG OU-1 Consent Decree work.

As stated above, EPA has confirmed that it does not collect or review "timesheets" from Hill. In a recent conversation with EPA's Steve Berninger, Elizabeth Cox, and Chris Lichens which was joined by Karl Fingerhood of the Department of Justice, EPA stated to OPOG representatives for the first time that EPA was uncertain as to what documentation Hill or its individual employees retained. By email dated February 12, 2007 from EPA's counsel, Steve Berninger, set forth the process Hill engages in prior to sending a bill to EPA for payment. EPA explained that Hill employees:

**complete electronic timesheets on a weekly basis**, which are reviewed and approved by that employee's supervisor, also on a weekly basis.....

At the end of each billing cycle (i.e., the end of each month), preliminary invoice data are collected and are reviewed by a project accountant assigned to the contract. The data are uploaded to an internal contract website, organized by work assignment and task/subtask. The site manager is notified when the data are uploaded, who then reviews the charges. The contract administrator also reviews the data at this time. If any inaccurate or questionable charges are identified, appropriate measures are taken (e.g., data could be transferred to the correct project, if necessary, or held for further investigation).

When the data are ready for the final invoice, another notice is sent to the site manager, who again reviews the data, and prepares the monthly status report (MSR). In preparing the MSR, the site manager explains and incorporates all charges except those in the office staff and clerical categories. If mistakes are identified after the final invoice data is uploaded to the website, a notation is made in the MSR that the time/charges will be corrected/adjusted on the next invoice. (*emphasis added*)

It is OPOG's understanding, therefore, that Hill employees do in fact keep electronic timesheets, something OPOG has been requesting for years. Since such timesheets do exist and could easily be provided to OPOG, we again request that such timesheets be provided for

our review. As we have in the past, we are willing to execute a reasonable Confidentiality

Agreement. EPA could easily and immediately resolve this matter by requiring Hill to provide to OPOG the underlying timesheets we now know exist for employees along with the hourly and cost information supporting these bills. This resolution would put this dispute regarding backup documentation to rest. To date however, EPA has continued to decline to provide such information. The fact that EPA is not, and has not been, provided with this information previously by Hill, makes it untenable for EPA to continue to require OPOG to pay these invoices without being provided all existing supporting documentation and allowing OPOG to do an independent review of the Hill charges.

Mr. Berninger's email also describes the Hill internal process for reviewing bills, however, it is unclear from the above description how Hill identifies "inaccurate or questionable charges" and what measures Hill takes to fix any problems it may find. It is also unclear what "further investigation" entails and who does such further investigation.

We understand that EPA relies upon Hill's Monthly Status Reports, Report I, Hill's internal QA/QC process, and Hill's "certification" of its bills but none of that allows EPA or OPOG to independently evaluate and analyze Hill's bills for errors. Additionally, although we understand that EPA project manager for this Site, Chris Lichens, reviews the Hill Status Reports and Report I and looks for egregious or other errors that can be ascertained from that documentation, neither Mr. Lichens nor EPA receives backup documentation or detailed timesheets necessary to evaluate whether there are accounting or other errors in the bills.

The MSRs are highly massaged documents provided by Hill to EPA which are then passed on to OPOG. The additional Report 1, while having a bit more detail including names of employees who work on the Contract as well as total dollars charged for that employee's work,



does not allow OPOG, or EPA for that matter, to engage in any detailed and independent review of Hill's charges. For instance if a Hill employee inadvertently charges time to OPOG that should have been appropriately charged to another site or to the McGraw Group, neither OPOG nor EPA has the necessary underlying timesheet details to detect and correct this error.

Thus, by agreeing to and defending this process, EPA essentially requires that both OPOG and EPA trust solely Hill's internal review processes for these bills, since it appears that there is absolutely no external oversight by EPA of the details of Hill's charges in the context of this Site. To make matters worse, EPA then requires that OPOG blindly pay the Hill bills, requiring that OPOG also rely completely on Hill's review of its own charges. This is not reasonable nor is it justifiable given Hill has much more information in the form of timesheets and hourly rate information that could easily be provided to OPOG for review.

OPOG is not requesting the EPA take on the task of reviewing backup documentation, but rather OPOG will review the documentation. OPOG merely seeks EPA's assistance in obtaining Hill's backup documentation in the form of time sheets and hourly rate and any other information it retains that support its bills so that OPOG can assure itself that the bills EPA passes on for payment by OPOG have been *independently* evaluated and reviewed, if not by the EPA, then at least by the PRP group paying the bills. As we have stated before, based upon the documentation EPA currently collects and then provides to OPOG, there is absolutely no way to determine if there are mistaken entries, accounting errors or other mistakes in the bills. Such errors could cumulatively, over the potentially long life of OPOG's involvement at this site, represent a significant amount of money.

OPOG believes it is unreasonable and not in compliance with professional standards

generally applicable to credentialed professionals (such as geologists or engineers) to fail to provide basic information describing the services provided, such as dates worked, the persons performing work, a description of the tasks provided, the charges associated with each task and itemized expenses. Given government contract auditing requirements, it is inconceivable that such records are not maintained by Hill. Thus they can be provided to OPOG.

OPOG reiterates that it is not, at this time, challenging the actual time Hill has charged to the Omega site as unnecessary or inconsistent with the NCP, although we reserve the right to do so if it appears Hill has overcharged OPOG or improperly billed for work unrelated to OU-1. OPOG's dispute is brought to assure that all charges are properly being made to OPOG as opposed to the McGraw Group, regional work or other unrelated sites.

EPA's letter of January 25, 2007 cited a number of NCP compliance cases. OPOG notes, however, that those cases are inapposite since each dealt with cost recovery by Agencies for remedial or removal work and addressed whether certain costs associated with those actions were consistent with the NCP. In at least one the cases cited by EPA, timesheets had in fact been provided to the PRPs being asked to pay costs of cleanup and the only matter at issue was whether the documented costs were consistent with the NCP. Additionally, none of the cases address the matter at issue here, e.g., whether it is appropriate to pass on to a PRP group conducting and paying for work at the Site pursuant to a Consent Decree, the EPA contractor's oversight costs incurred when EPA, the contracting agency, does not independently obtain or review all available contractor information to determine if accounting or other errors have been made.

Hill's claimed costs have almost doubled from 2003 -2004 and now annually exceed

\$170,000. Hill's charges appear to be unreasonably high and, without more substantive documentation from Hill, as to the detailed activities each person engaged in, the dates they undertook such activities, the time each activity required, the number of employees asked to work on each activity and their hourly rate, OPOG cannot evaluate the reasonableness of these charges, whether they were appropriately charged to the OU-1 contract, whether there may be accounting errors associated with the underlying charges by Hill or whether, ultimately the charges being forwarded to OPOG for payment are truly Oversight Costs as defined by the Consent Decree. EPA continues to require OPOG to blindly pay these oversight costs and to trust Hill even though EPA does not receive any backup support for these bills and has no incentive to do a detailed review since it does not have to pay Hill for these charges.

Hill cannot be allowed to avoid providing the basic information necessary to evaluate whether a bill is proper just because it is providing these services through a government contract and claims the timesheets and other information are confidential business information. OPOG, as the party actually paying for these activities, has a right, and an obligation to its member companies, to review backup and support for these bills. Additionally, because OPOG is required to pay these bills and EPA is not, OPOG has a vested interest in evaluating the documentation in detail and, as the entity paying these bills, should be provided with all documentation supporting these bills.


Accordingly, without supporting documentation in the form of time sheets with associated hourly rates and all other information retained by Hill, OPOG disputes that the Hill charges are in fact Oversight Costs as defined by the Consent Decree. The fact that EPA does not receive from Hill detailed supporting documentation for the Hill charges makes it even more important that OPOG to have an opportunity to review such documentation for accuracy in

accounting and assure charges made to the OU-1 contract are properly made.

As set forth again herein and in OPOG's prior informal challenges, EPA's and Hill's highly massaged summary descriptions of the services performed for which reimbursement is sought by EPA continues to be inadequate to allow OPOG to determine whether these services are properly considered Oversight Costs under the Consent Decree. OPOG, therefore, disputes the Hill charges because they are not supported by documentation setting forth the work being done and the charges associated with this work, in the form of timesheets or other documentation showing the detailed descriptions of the work done, who did the work, when the work was done, tasks performed, time spent and hourly rates. Since EPA does not review this information, there is no independent oversight of Hill's charges. Since OPOG pays these invoices, OPOG should be provided with all documentation supporting these invoices and without this, OPOG cannot meaningfully evaluate whether the charges submitted by Hill to EPA for payment by OPOG are properly deemed "Oversight Costs" as defined in the Consent Decree or whether these charges are correct from an accounting perspective. Therefore, pursuant to Section XIX of the Consent Decree, OPOG initiates Formal Dispute resolution under Paragraph 57 of the Consent Decree and requests the EPA to direct Hill to provide all supporting documentation as described herein to OPOG for its review.

DATED this 12th day of March, 2007.

GARVEY SCHUBERT BARER

By   
Leslie R. Schenck  
OPOG Representative